

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, ) Docket No. 3:05CR781  
Plaintiffs, ) Toledo, Ohio  
v. ) October 13, 2006  
JOHN A. MARTINEZ, ET AL., ) Sentencing  
Defendants. )

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TRANSCRIPT OF SENTENCING OF JOSE C. MARTINEZ, JR.  
BEFORE THE HONORABLE DAVID A. KATZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Ava Dustin  
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For the Defendant,  
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1                   COURTROOM DEPUTY: 3:05CR781, defendant number  
2 two, Jose C. Martinez, Jr., sentencing.

3                   THE COURT: Hold on just a minute.

4                   MS. DUSTIN: Your Honor, the defendant, Jose C.  
5 Martinez, Jr. appears in front of you today for sentencing.  
6 He's represented by attorney Jane Randall.

7                   He was convicted after a jury trial on count one,  
8 conspiracy to distribute and possess with intent to  
9 distribute cocaine, and on counts 35, 40, 48, 49 and 50, of  
10 unlawful use of communications facility. The Government  
11 has reviewed the presentence report and has no objections  
12 to the sentencing guideline level or the factual content of  
13 that report.

14                  THE COURT: Thank you. Mr. Martinez, have you  
15 had the opportunity to read and review with Ms. Randall,  
16 your attorney, the presentence report prepared by the  
17 probation officer in your case?

18                  THE DEFENDANT: Yes, I have, Your Honor.

19                  THE COURT: And Ms. Randall, except as reflected  
20 in the back of that report and in your sentencing  
21 memoranda, the last of which I reviewed this morning, are  
22 there any additional issues with respect to the report  
23 itself?

24                  MS. RANDALL: No, Your Honor. I just would note  
25 that there is one additional letter which The Court has

1 been forwarded from his wife which it received this  
2 morning.

3 THE COURT: I have -- I'll get to that in a  
4 moment.

5 MS. RANDALL: Okay.

6 THE COURT: I have a letter dated the 10th from  
7 Rebecca.

8 MS. RANDALL: That would be it, I believe.

9 THE COURT: Okay. Thank you. Then I'll order  
10 that the presentence report be placed in the record under  
11 seal. Should an appeal be taken in this case, counsel on  
12 appeal shall have access to that report, except the  
13 recommendation section, which is to remain sealed.

14 I will note that I have received today and have  
15 reviewed some letters, I believe I had reviewed previously,  
16 I reviewed Rebecca Martinez' letter dated Tuesday of this  
17 week, October 10th.

18 I've reviewed the letter from a Marie Cordrector  
19 (phonetic) dated June 30, and a letter from The Economic  
20 Opportunity Planning Association dated June -- July 17th,  
21 and finally a letter from Sheriff Steyer of Seneca County  
22 dated the 27th of July. They will be made a part of the  
23 record in this case. And I will speak to them in a few  
24 moments.

25 In looking at the objections and the addendum to

1 those objections, which I read this morning, I think they  
2 were filed this morning.

3 MS. RANDALL: That's correct.

4 THE COURT: I will agree for reasons I will now  
5 articulate, in the request for a base level offense of 32,  
6 the presentence report at page 14 paragraph 151, concludes  
7 that it is appropriate for a base offense level of 36,  
8 based upon drug quantities found by the jury and attendant  
9 criminal activity which was testified to at trial. And as  
10 we all know, I sat through that trial. And quite frankly,  
11 I believe that those drug quantities are probably  
12 appropriate. I don't find a significant level of  
13 disagreement with the report's conclusion. However, it  
14 seems to me that one of the things we strive for in a  
15 sentencing, in particular in a case like this, is to be  
16 consistent among relatively equally culpable defendants in  
17 a -- in a conspiracy; whereas here the jury found both  
18 brothers guilty of the primary charges in this case. And  
19 that would be Count 1 of the indictment, the conspiracy  
20 charge. And where I heard the evidence in this long trial,  
21 I have concluded that the -- the base offense level should  
22 be the same. And the base offense level in John Martinez's  
23 case where the jury heard the same evidence was 32, and I  
24 will use a 32 for consistency between those two defendants.

25 With respect to the second issue which I see,

1 adjustment for role in the offense, I am equally convinced  
2 that both brothers were leaders and should be given a four  
3 level increase in their offense level as a result of an  
4 organizer and -- and/or leader of five or more participants  
5 in the offense. That was clear from the testimony I heard  
6 as reflected in this report. That takes us to a level 36  
7 as the total offense level. That results with a criminal  
8 history category of one as contrasted to John's criminal  
9 history category of three to a sentencing opportunity of  
10 188 to 235 months. I'll hear from Ms. Randall first with  
11 regard to the conclusions I've just articulated, and then  
12 from The Government.

13 MS. RANDALL: Thank you. Your Honor, first of  
14 all, Joe accepts responsibility for what he did.  
15 Consistently throughout the time I've represented him he  
16 has said, I know I have to pay for what I did, I know I  
17 have to pay for what I did, he has not shirked from that  
18 one iota. As The Court is aware, there were repeated  
19 efforts to resolve this case short of litigation, short of  
20 trial. They did not succeed. He was conflicted and, in  
21 fact, to the extent that our society promotes family  
22 values, he was placed with a Hobson's choice, and  
23 ultimately, rather than see his dad die in prison, which is  
24 what it would have amounted to given The Government's  
25 proposed enhancement for his father's plea, he chose --

1 chose to go to litigation. He made the ultimate sacrifice  
2 knowing that he would, in all likelihood, be found guilty,  
3 and knowing that as a result it would put this court in a  
4 difficult position if it did not sentence him to more time  
5 than was offered at the time of the plea opportunity.

6           Having said that, he faced the Hobson's choice,  
7 and he did the right thing for himself morally within  
8 the -- within the family. Now, he did this notwithstanding  
9 the fact that his father had not been an ideal father to  
10 him while he was growing up. He forgave his dad. What had  
11 been part of his childhood that may have contributed,  
12 probably very well did contribute for this being a  
13 situation where he would choose to do what he openly admits  
14 that he did.

15           Having said that, he now faces The Court with  
16 gratitude that The Court chooses to interpret the base  
17 offense level as it did for his brother at a 36. He begs  
18 The Court to pay close attention to the letters that it has  
19 beforehand, before The Court, in distinguishing him from  
20 his brother and in determining what that sentence should  
21 be. He is his brother's keeper, they were in it to some  
22 point together. They are different, and where they are  
23 different is what message this Court sends to society to  
24 people similarly situated to Jose.

25           The fact that he was extremely hardworking and

1 consistently supported his family, not just as an  
2 obligation, but as a privilege and opportunity to be a good  
3 dad, cannot be ignored. The fact that he was under  
4 additional pressure financially because he wanted to bring  
5 his daughter by his first wife into the home, made it an  
6 additional strain on the family. He responded to  
7 temptation, he's guilty of that, no question about it. He  
8 did what he did. But it doesn't stop the fact that Joe  
9 Martinez, Jr., who is before The Court, is different than  
10 his brother and his dad to the extent that he's also coming  
11 open minded and as is his mother-in-law and can attest he  
12 has done volunteer work for N.I.F.T.I and EEOPA. He's  
13 helped old folks with clearing lawns, mowing lawns,  
14 shoveling, he's painted houses for the elderly. He's  
15 responded when requested to do something for the community.  
16 So that before The Court is -- are two Joes, one bad, one  
17 not -- not good, I'm sorry, one bad and one better.

18 All of us probably have two sides, and we all  
19 want to be viewed in the light most favorable. So he is  
20 conflicted, but as his counsel I would beg The Court to  
21 focus on the good Joe too, the Joe that did things not for  
22 selfishness, but because he succumbed to temptation, the  
23 Joe that wanted to be the good dad to his three children,  
24 the good dad to his wife and the good husband to his wife,  
25 I mean, perfect as we all are. And the Joe that had a

1 sense of community spirit.

2 I believe he's already written to The Court of  
3 his hopes for rehabilitation. Joe has always wanted to be  
4 better, to have a better life for his family and for  
5 himself. He'll pay the price but he's asking when The  
6 Court sentence him that he make those distinctions that  
7 have been noted in the objections to the report and by  
8 letter and sentence him to the amount of time minimally  
9 necessary to return him to society as a contributing adult  
10 and as a caring father.

11 THE COURT: Thank you. Ms. Dustin, I'll get back  
12 to them later, this is just on the sentence that -- on the  
13 level that I came to, if you wanted to address it.

14 MS. DUSTIN: With respect to the level, the  
15 evidence, as The Court has heard during the trial, was  
16 substantial in terms of the amount of cocaine that this  
17 defendant was responsible for. It's The Government's  
18 position that the defendant was, in fact, responsible for a  
19 level that would equate him with 70 kilograms of cocaine,  
20 because that is what was testified to by Jose Mendez  
21 Vargas, who was the courier that brought it from the  
22 ultimate source of supply in Texas by Anthony Hobbs. We  
23 would note that it was this defendant that was supplying  
24 his brother, John Martinez, with cocaine during the time  
25 period between 2001 and 2005.



1           With respect to the amount of cocaine, it's The  
2 Government's position that he should be at a base offense  
3 level of 36, and that should be increased for four levels  
4 for leader or organizer. We would like to respond to  
5 Ms. Randall's other arguments at the appropriate time.

6           THE COURT: We'll get there. Thank you. I  
7 recognize, as I said earlier, the level of the guidelines  
8 based on direct drug attribution, but I believe that the  
9 two brothers were equally culpable, and that therefore, a  
10 32 with a four level enhancement for role in the offense is  
11 appropriate, and I will sentence at a level 36, criminal  
12 history one.

13           Before doing that, I would like to hear if there  
14 is anything further from Ms. Randall, and if there is,  
15 fine. If there isn't I'd like to hear from Joe. It's not  
16 mandatory, but I always like to hear from the defendant.

17           THE DEFENDANT: I've actually wrote something, I  
18 didn't really go over it with my lawyer but --

19           THE COURT: That's fine.

20           THE DEFENDANT: It's how I feel right now.

21           THE COURT: You don't have to stand up. Could  
22 you speak into the mike, though.

23           THE DEFENDANT: Your Honor, I would like to  
24 apologize to my family, this Court and my community. I  
25 feel as if I failed everybody. I'm willing to accept full

1 responsibility for my actions. I understand that some  
2 people make statements against me and some people had two  
3 or three chances to change their minds. I guess what I'm  
4 trying to say, some of those statements against me were  
5 false, but being that they were first to make statements  
6 automatically made the statements true. I was willing to  
7 cooperate but don't understand why I wasn't given the  
8 chance to. I would have gotten the chance to so I could  
9 have been back with my family sooner or maybe even gotten  
10 my job back at Ford.

11 If given a chance, Your Honor, I would like to  
12 become a certified welder electrician if possible while in  
13 prison. Those are my goals. Your Honor, I am 36 years  
14 old. I've never really been in any serious trouble. I am  
15 hoping for a second chance in life not to walk out those  
16 doors but to see if you would please consider the mandatory  
17 minimum of -- minimum sentence against me. Once again,  
18 Your Honor, I'm very, very sorry.

19 THE COURT: Thank you, Joe. Ms. Dustin?

20 MS. DUSTIN: A couple things The Government wants  
21 to point out with respect to some comments Ms. Randall  
22 made. At the time that we were engaging in pretrial  
23 proceedings in this case, all three of the defendants from  
24 the Martinez family were, in fact, given opportunities to  
25 resolve the case short of trial. And at the very end of

1 those proceedings, all three of these defendants met here  
2 in this courtroom and decided to -- to go to trial rather  
3 than pleading guilty and decided that all -- it was either  
4 going to be all three of them went to trial together or all  
5 three pled, and it was decided that they would proceed to  
6 trial. Nothing prevented this defendant from pleading  
7 guilty to the indictment. He certainly could have done  
8 that too but he chose to exercise his right and he was  
9 convicted.

10 Ms. Randall's also talked about the fact that  
11 this defendant has never been in trouble and that he has no  
12 criminal history, but he was the person in the family that  
13 was supplying his brother, John, he was the supplier to --  
14 of John from 2001 to 2005. He was the one that had the  
15 source of supply out of Texas. He's the one who made the  
16 connections. And it was this defendant that was  
17 responsible for flooding this community with a substantial  
18 amount of cocaine from 2001 until 2005.

19 Ms. Randall talks about the community service  
20 that this defendant has provided. I think that when you  
21 reflect upon the community service, all you need do is look  
22 out at who's sitting next to each other, it's because of  
23 this man that Derek Abitua is sitting here. We have Jose  
24 Martinez, Jr., 36 years old who's responsible for bringing  
25 cocaine into this community. That cocaine ends up in the

1 hands of mid-level distributors like Antwan Wynn. Antwan  
2 Wynn in turn sells it to lower level distributors like  
3 Derek Abitua who's barely an adult. That's the community  
4 service that this man has provided over the course of the  
5 last five years. And for those reasons, we ask that this  
6 court sentence the defendant to 235 months.

7 THE COURT: Thank you.

8 MS. RANDALL: Your Honor, my client would like an  
9 opportunity to respond. Could I have a minute to hear what  
10 he's going to say before he says it?

11 (A brief discussion was had off the record.)

12 THE DEFENDANT: Your Honor, I guess I was always  
13 taught that every mind -- my mother always told me that  
14 every mind is -- is its own world. What my brother did,  
15 that was his business. And I think in the phone  
16 conversations there was one phone conversation between me  
17 and my brother. If we were in it together as much as  
18 people say we were, I think there would have been more  
19 conversations involved than just one conversation between  
20 me and my brother. They're going by what one man, a  
21 third-time felon has said against me, all the people that  
22 talked against me.

23 Now, the numbers aren't right because The  
24 Government says that, okay, Jose Vargas said he brought 20  
25 to 40, well Anthony Hobbs said 70. Now, who's lying?

1 Somebody's not telling the truth because Jose Vargas said  
2 20 to 40 and that's on paper. If that's my supplier and  
3 Anthony Hobbs is the person I'm going to and he's saying  
4 70, somebody's not telling the truth.

5 Now, The Government will say there's a guy by the  
6 name of Mario, maybe there was a guy by the name of Mario,  
7 but the owner of these drugs, which Alejandro Correra, he  
8 was also dealing with other people here in Toledo, and  
9 there is a confidential source against me, and I know that  
10 because of my indictment, the discovery papers show that.  
11 Like I said, the only person I ever spoke to was Jose  
12 Mendez Vargas, and he in court said 20 to 40 and was given  
13 two or three different chances to change his mind.

14 Now we got Anthony Hobbs who knows the system,  
15 third time getting caught and says well, you know what 70.  
16 He knows that more drugs lesser time for him. And that's  
17 what I want to say. And that's the only thing I have to  
18 say, Your Honor, could you please consider that, you know  
19 what, his credibility is not the greatest and they're going  
20 by a higher number.

21 I'm sorry, and as far as my brother goes, he's  
22 old enough to do what he wants. The only time I ever seen  
23 my brother is at family gatherings on Sunday at my mom. I  
24 always worked, I've always took care of my kids, I worked  
25 afternoons. And whatever my brother did, he did on his

1 own. Whatever my father did, he did on his own. Like I  
2 said, there's one phone conversation between me and my  
3 brother. I think if we were partners in crime or whatever,  
4 I think we would have kept more tabs on each other more  
5 often. They got all the phone conversations. They've got  
6 I don't know how many conversations, the conversations just  
7 me and my mother, me and my wife, me and my kids, me and my  
8 brother because we both worked at Ford. I called my  
9 brother to see what lines were running. I called my sister  
10 what was she packing for lunch, that's what my phone calls  
11 consisted of. All these five phone conversations, two are  
12 of them with Twan, two with Jose Vargas and one with Ruben  
13 Vargas, not one I was charged with against my own brother.  
14 I think if we were organized crime as organized crime  
15 family as they say we were, I think we'd keep tabs with  
16 each other more than one phone conversation. And it was a  
17 week and a half of phone conversations and they heard the  
18 conversations, I heard the conversation, they consist of me  
19 calling my daughter, my wife, my mother, my sister, my  
20 brother. It was not that -- they tapped my phones and they  
21 heard the conversations, even with Twan. The phones were  
22 tapped for a minute, they got two conversations that I'm  
23 being charged with for Twan. They got one conversation  
24 between me and Ruben Vargas, and there was 30 days of phone  
25 recordings. That's the only thing I have to say, Your

1 Honor.

2 MS. DUSTIN: Nothing further.

3 MS. RANDALL: I think if I might just summarize.  
4 Mr. Martinez feels that The Government's take on the  
5 criminal activity that was occurring here is other than his  
6 experience.

7 THE COURT: The most difficult and stressful part  
8 of any judge's obligation is that of sentencing. And my  
9 experience is no less, no different. I sat through the  
10 trial, and I'm clothed with the same information that was  
11 the jury. The sad thing about criminal activity are two  
12 truths:

13 One, human beings never realize what they have  
14 until it's about to be taken from them.

15 And two, the most adversely impacted of all are  
16 the family for which there is generally little or no blame,  
17 upon which there is generally little or no blame.  
18 Fortunately or unfortunately, except in one or two very  
19 rare cases, we can't take that into consideration in  
20 sentencing. This is not one of those occasions.

21 I've read with interest all of these letters that  
22 I've received over the months, but in particular your wife  
23 Rebecca's. And I noticed immediately a couple of things.  
24 The obviously high level of intelligence and the ability to  
25 put into words what is in feeling intellectually and

1 emotion, and I've read that. Also understand that some of  
2 the things you've done, and I must say because of for whom  
3 they were done, it was under her influence, are recognized  
4 in the difference between your criminal history and that of  
5 your brother, and a significant difference in the sentences  
6 that both of you receive. That's driven by one thing and  
7 one thing only, criminal history. And I'm taking that  
8 already into consideration.

9           And I've taken into consideration in giving you  
10 the same level, 32 as your brother, that the jury verdict  
11 and the testimony could justify clearly a higher level.  
12 I've looked at the guidelines and I've looked clearly and  
13 extensively at 3553A.

14           I've looked at your background, and that  
15 background, outside of criminal activity of which there is  
16 little except in this case, is exemplary. And with all due  
17 respect to you, sir, I attribute a lot of that to a woman  
18 by the name of Rebecca to whom you are fortunate enough to  
19 be married. But I've looked at the nature and extent of  
20 this conspiracy over at least a four-year period and the  
21 adverse impact it had on this community. And I'm taking  
22 that into consideration in my sentencing, and your  
23 involvement in it.

24           And I think there is a need for punishment, I  
25 think there is a need for, in particular, not so much



1 punishment, as disabling you from participating in the drug  
2 culture and feeding that drug culture with distribution.  
3 That will protect the public. I also believe it's  
4 important, as you yourself have indicated, that you need  
5 time for rehabilitation and training. And unfortunately  
6 for you, that is an extended period of time. I've looked  
7 at all of these things, and it is beyond my ken how, with  
8 the evidence that the jury had, you could expect much less  
9 than what I am going to sentence you to serve. Unfortunate  
10 for you and your family but as you yourself has said, it  
11 was you who chose to participate in it. You are separate  
12 from your brother, you each had free will. I'm going to  
13 announce the sentence now after which you and your counsel  
14 and The Government will all have an opportunity to react to  
15 it. Excuse me for just one moment.

16 I'll now announce that sentence. Pursuant to the  
17 Sentencing Reform Act of 1984 and 18 United States Code  
18 section 3553(a), it is my judgment that the defendant, Jose  
19 C. Martinez, Jr., is hereby committed to the custody of  
20 Bureau of Prisons for -- to be imprisoned for a term of 220  
21 months on Count 1 and a term of 48 months on each of Counts  
22 35, 40, 48, 49 and 50, all to be served concurrently. I  
23 recommend to the bureau of prisons that he be designated to  
24 a facility as close to Toledo, Ohio, as possible,  
25 preferably that federal facility at Milan, Michigan, and

1 that he be given an opportunity to have training as an  
2 electrician and welder so as to become certified in those  
3 or either of those two endeavors. He should also be given  
4 credit for time served in federal custody on this crime.

5           Upon release from imprisonment, you shall be  
6 placed on supervised release for a term of five years,  
7 consisting of five years on Count 1 and three on each of  
8 the other five counts, all to be served concurrently.

9 Within 72 hours of release from the custody of The Bureau  
10 of Prisons, you shall report in person to the probation  
11 office in this district, this division or to any other  
12 district in which you are released.

13           While on supervised release, you shall not commit  
14 another federal, state or local crime, shall not illegally  
15 possess a controlled substance, shall comply with all  
16 standard conditions adopted by this court and with the  
17 following additional conditions: You shall refrain from  
18 any unlawful use of a controlled substance, and submit to  
19 one drug test within 15 days of commencement of  
20 supervision, and to at least two periodic drug tests  
21 thereafter at times determined by your probation officer.  
22 You shall not possess a firearm, destructive device or any  
23 dangerous weapon. You shall submit your person, residence,  
24 place of business, computer or vehicle to a warrantless  
25 search conducted and controlled by your United States

1 Probation Officer at a reasonable time in a reasonable  
2 manner, based upon that officer's reasonable suspicion of  
3 the presence of contraband or a violation of the condition  
4 of supervised release. Failure to submit to such a search  
5 may be grounds for revocation of supervised release. And  
6 you shall inform other residents in your premises that the  
7 premises may be subject to a search without a warrant  
8 subject to this provision.

9           You shall participate in an outpatient program  
10 approved by the United States Probation Office, pardon me,  
11 for the treatment of drug and/or alcohol abuse which will  
12 include testing to determine if you have reverted to  
13 substance abuse. You shall cooperate in the collection of  
14 DNA, as directed by your probation officer. You shall --  
15 well, based upon my review of your financial condition as  
16 set forth in the report I've received and reviewed, I find  
17 that you did not have the ability to pay a fine and will  
18 waive a fine in this case. If you are convicted of another  
19 violation of distribution -- of a controlled substance, you  
20 will be declared ineligible for federal benefits for a  
21 period of -- of five years.

22           Finally, you shall pay to the United States a  
23 special assessment of \$600, which is due and payable  
24 immediately. Any objections to the sentence?

25           MS. DUSTIN: The Government does take exception

1 with respect to the base offense level, Your Honor.

2 THE COURT: Thank you.

3 MS. RANDALL: Only those as already noted.

4 THE COURT: Very good. Then I'll order that they  
5 be -- that sentence be imposed as just stated on the  
6 record.

7 Mr. Martinez, you have the right to appeal your  
8 conviction and/or your sentence, particularly if you feel  
9 that the sentence is contrary to law, or if you feel that  
10 there is a -- an error or errors in your case, including  
11 trial. Any such appeal must be taken within ten days after  
12 this matter is released -- reduced to a judgment entry  
13 filed with the clerk of this court. Any such notice of  
14 appeal filed within ten days in the clerk's office on the  
15 first floor of this courthouse will be done if you direct  
16 your attorney to do so. If on appeal you cannot afford an  
17 attorney, one will be appointed for you by the Court of  
18 Appeals for The Sixth Circuit.

19 I'll order that you be remanded to custody  
20 pending designation to an institution by The Bureau of  
21 Prisons, and that a written record of my reasons for  
22 sentencing be provided to both The Bureau of Prisons and  
23 the probation department in this district and division.  
24 Anything further from The Government?

25 MS. DUSTIN: No, Your Honor.

1 THE COURT: Anything further from the defendant?

2 MS. RANDALL: He just was confirming that The  
3 Court is going to request Milan and it did?

4 THE COURT: Yes.

5 THE DEFENDANT: Thank you.

6 THE COURT: Yes, I have already placed that on  
7 the record and Cindy will place it in the entry, a copy of  
8 which goes to The Bureau of Prisons and The Sentencing  
9 Commission. That concludes this hearing.

10 MS. RANDALL: Thank you, Your Honor.

11 THE COURT: Thank you.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

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Angela D. Nixon, RPR

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Date